

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MAJID PAJOUH,

Plaintiff,

vs.
CALIFORNIA BUSINESS BUREAU,
INC.,

Defendant.

CASE NO. 13cv2521-WQH-JLB

Order

HAYES, Judge:

The matter before the Court is the Ex Parte Motion to Appeal Magistrate Judge's Order to Plaintiff to be Deposed filed by Plaintiff Majid Pajouh. (ECF No. 43).

On or around August 25, 2014, Defendant California Business Bureau prepared a Notice of Taking Deposition of Plaintiff Majid Pajouh, set for September 16, 2014, in Encino, California. (ECF No. 43 at 7). The attached proof of service, filed by Plaintiff as an exhibit, states that the notice was served by mail on August 25, 2014 but is unsigned. *Id.* at 9. On September 3 and 9, 2014, Magistrate Judge Jill L. Burkhardt held discovery conferences between Plaintiff and Defendant. (ECF No. 42). Following discussion on September 3, 2014, and argument presented on September 9, 2014, the Magistrate Judge found that Defendant was not precluded by the Federal Rules of Civil Procedure in noticing a deposition more than 100 miles from Plaintiff's home in Encino, California. *Id.* at 2. The Magistrate Judge also found that, as of September 9, 2014, Plaintiff was in receipt of and served with the deposition notice. *Id.* The Court ordered that "the deposition go forward as noticed for Encino, California on September

1 16, 2014.” *Id.*

2 On September 12, 2014, Plaintiff filed the Motion to Appeal Magistrate Judge’s
 3 Order. (ECF No. 43). On September 15, 2014, in light of Plaintiff’s appeal, the Court
 4 ordered that the deposition of Plaintiff be stayed. (ECF No. 46). On September 19,
 5 2014, Defendant filed an opposition. (ECF No. 49).

6 Federal Rule of Civil Procedure 72(a) provides that “[t]he district judge in the
 7 case must consider timely objections [to nondispositive decisions of the assigned
 8 magistrate judge] and modify or set aside any part of the order that is clearly erroneous
 9 or is contrary to law.” Fed. R. Civ. P. 72(a).

10 Plaintiff contends that the Magistrate Judge’s order should be overruled because
 11 Rule 30 “does not permit Plaintiff to be Deposed 133 miles from his residence in San
 12 Diego, CA” and Rule 45(c)(1)(A)-(B) only applies to non-parties. (ECF No. 43 at 2).
 13 Plaintiff also contends that the Magistrate Judge erred in ordering that he be deposed
 14 in Encino because the deposition notice was defective. Plaintiff asserts that the proof
 15 of service of the deposition notice contains no signature.

16 Defendant contends that the Federal Rules of Civil Procedure permit a party to
 17 an action to be deposed anywhere in the state of California. Defendant also contends
 18 that Local Civil Rule 5.2 specifically provides that a failure to make proper proof of
 19 service does not affect the validity of the service.

20 Federal Rule of Civil Procedure 45(c)(1)(B) provides that “a party” may be
 21 subpoenaed “to attend a trial, hearing or deposition.... within the state where the person,
 22 resides, is employed, or regularly transacts business....” Fed. R. Civ. P. 45(c)(1)(B).
 23 The plain language of Rule 45 allows for Plaintiff, a resident of California, to be
 24 deposed in Encino, also in California. Rule 30 provides no limitation on where
 25 depositions can be noticed. The Court concludes that the Magistrate Judge’s ruling that
 26 Plaintiff may be deposed in Encino, California was not “clearly erroneous” or “contrary
 27 to law.” Fed. R. Civ. P. 72(a).

28 Local Civil Rule 5.2 provides that proofs of service of served papers “must be

1 filed in the clerk's office promptly and in any event before action is to be taken thereon
2 by the court or the parties." S.D. Cal. Civ. Local Rule 5.2. "[F]ailure to make the proof
3 of service required by this subdivision does not affect the validity of the service...." *Id.*
4 The Magistrate Judge found that Plaintiff had been effectively served with the
5 deposition notice as of September 9, 2014. Plaintiff has presented no evidence that he
6 was not properly served. By submitting the deposition notice as an exhibit, it appears
7 that Plaintiff was in fact served. (ECF No. 43 at 7). Plaintiff cites no authority for the
8 proposition that the serving party must serve a signed proof of service on the party
9 being served in order to effectuate service. The Court concludes that the Magistrate
10 Judge's finding that Plaintiff was effectively served with the deposition notice was not
11 "clearly erroneous" or "contrary to law." Fed. R. Civ. P. 72(a).

12 IT IS HEREBY ORDERED that the Ex Parte Motion to Appeal Magistrate
13 Judge's Order to Plaintiff to be Deposed (ECF No. 43) is DENIED.

14 IT IS FURTHER ORDERED that the stay on the deposition of Plaintiff (ECF No.
15 46) is LIFTED. Defendant may notice a deposition of Plaintiff in Encino.

16 DATED: September 25, 2014

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18 **WILLIAM Q. HAYES**
United States District Judge

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